

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2395 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

H D PATEL

Versus

STATE OF GUJARAT

Appearance:

MR DR BHATT for Petitioner

MR. L.R.POOJARI,LD.GOV.T.COUNSEL for Respondent No. 1

MR DA BAMBHANIA for Respondent No. 3

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 14/08/97

ORAL JUDGEMENT

By filing the present petition, the petitioner challenges the orders dated April 27, 1988, Annexure-A, under which he came to be retired prematurely in public interest.

The case of the petitioner is that, he was

appointed as a PSI in year 1955, and since then, he used to render sincere, honest and meritorious service as a Police Officer, and was awarded prizes on many occasions for rendering excellent services to the Police Department. His case is that, he was not being promoted in the cadre of the P.I. and that, he had raised his grievance in this respect also. But later on, according to him, to his utter misfortune, he had to suffer the impugned orders dated April 27, 1988.

Ld. counsel Mr. D.R. Bhatt appearing on behalf of the petitioner urges that, of course, the petitioner could have been made to retire prematurely in public interest, but that, the record would not show anything in nature of the public interest. Before going to the facts of the case, ld. counsel Mr. Bhatt places reliance upon the Supreme Court decision in case of J.D. Shrivastava, Appellant v. State of M.P. and others, Respondents, A.I.R. 1984, S.C. pg. 630. The Supreme Court decision makes it clear that, the power to retire a Government servant compulsorily in public interest in terms of the service rule is absolute, provided, the authority concerned forms an opinion bona fide that, it is necessary to pass such an order in public interest. The Supreme Court has also said that, if such decision is passed on collateral grounds, and if the decision is arbitrary, it is liable to be interfered with by the Court of Law.

In view of the say of the Supreme Court as indicated above, the endeavour should be to find out, as to whether the above said orders of premature retirement can be said to be the orders in public interest. The collateral question would be as to whether it can be said that the said decision is based up on collateral grounds or the decision is arbitrary. The respondents have filed the affidavit-in-reply controverting the case of the petitioner, and has provided the Court with a detailed service record of the petitioner. It is clear from the affidavit-in-reply that, in his entire service career the petitioner was given rewards on 20 occasions, but during this period 57 punishments came to be inflicted upon him. Out of the above said punishments, 3 punishments were major in nature. It is also said in the affidavit-in-reply that, upon the overall consideration of the service record, it was thought fit to issue the orders of compulsory retirement. It is therefore clear that, before passing of the impugned orders, the service record of the petitioner was taken into consideration and his performance as a Police Officer overall was taken into consideration.

It appears that, during the year 1982-83 the offences punishable under section 304 Part-II and 201 read with section 114 came to be registered against the petitioner. He was able to secure the orders of acquittal from the Sessions Court. But ultimately, in Criminal Appeal No. 765 of 1983 he came to be convicted for the above said offences by this Court, under the orders dated October 22, 1991. Ld. counsel Mr. Bhatt makes it clear that, he is not in a position to say as to whether the above said Judgment of conviction & sentence had become final or came to be interfered with by the Apex Court. Any how the contention coming from ld. counsel Mr. Bhatt in this respect is that, the orders of premature retirement came to be passed before the petitioner came to be convicted in the appeal by this Court. Factually, learned counsel appears to be correct, but this fact situation would not be able to change the complexion of the orders impugned. Even if the petitioner came to be acquitted by the trial Court, the above said aspect of the involvement of the petitioner in case of a custodial death could have been taken in to consideration by the Respondents, while examining the question of public interest and the question of the order of premature retirement.

Looking to all these aspects of the matter, it appears that the orders impugned cannot be said to be the orders based upon collateral grounds or arbitrary. Because of this position, it appears that the present petition requires to be dismissed. I order accordingly. Petition stands dismissed with no order as to costs. Rule shall stand discharged.

Before parting, it shall have to be noticed that, the affidavit-in-reply filed on behalf of the Respondent no.2 could not be traced in the docket. Ld. Govt. counsel Mr. Poojari was able to read from copy of the affidavit in reply. He shall present a readable xerox of the affidavit in reply, within a period of three days hereof.

/vgn.